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CORPORATION JOURNAL

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Contents

Recent Decisions

DOES YOUR CORPORATE TITLE FIT?

Take Shakespeare's word for it and any name would do as well as another. Take the record of present-day corporations, however, and it's an entirely different story.

Consider the hundreds of charters amended every year so that corporations may rid themselves of corporate titles casually adopted at the time of organization. Consider the number of corporations which have painstakingly built up prestige for a corporate name and then, when the time came for expansion into outside states, found themselves balked because the name was not available.

In the same vein, consider the corporations balked in expansion plans because the corporate title contained a word which, although it did a good job in the home state, was forbidden by statute in another.

The corporate title, then, deserves careful study by the corporation's lawyer. And in those cases where there is a possibility of later expansion, the name should be verified in the states in which the corporation may later qualify as a foreign corporation.

C T, of course, can assist the attorney in getting a quick, accurate check on any name or names. Also, from its files (complete in each C T office), C T can supply counsel with whatever information he desires about the limitations on corporate titles in any state, territory, U.S. possession or Canadian province. If interested, counsel may also obtain information as to the states which provide protection of corporate title for domestic corporations, foreign corporations, both, or neither. Ask at the C T office nearest you.

delaware corporations

Where Charter is Voided Under Section 71 Status in Delaware and Other States

UNDER Section 71 of the Delaware Franchise Tax Law, a Delaware corporation which neglects or refuses to pay its State franchise taxes for two consecutive years may have its charter voided and the powers conferred by law upon it declared inoperative. It may not, after that event, carry on the business for which it was incorporated (Sec. 42, Del. Corp. Law) but it is continued for three years for the limited purpose of prosecuting and defending suits by or against it (*Townsend v. Delaware Glue Co.*, 12 Del. Ch. 25, 103 Atl. 576; *Tradesmen's National Bank and Trust Co. v. Johnson*, 54, F. 2d 367), and to enable the corporation gradually to close and settle its business and to dispose of and convey its property and divide its capital stock. During these three years, the directors remain in charge of the corporate affairs as directors. (*Carle v. International Clay Products Co.*, 15 Del. Ch. 166, 132 Atl. 892.) During that time, or even after its expiration, the Court of Chancery may, on application of any creditor or stockholder, either appoint the directors trustees or appoint one or more persons to be receivers for the company. (Sec. 43, Del. Corp. Law.) Trustees or a receiver appointed thereafter, or if appointed prior to that event, may continue active in the final settlement of the unfinished business of the corporation so long as the Chancellor deems necessary. (Sec. 43; *Harned v. Beacon Hill Realty Co.*, 9 Del. Ch. 411, 84 Atl. 229; *O'Brien v. King et al.*, 17 N. Y. S. 2d 44.)

As to states other than Delaware, in which a Delaware corporation, whose charter has been voided under Section 71 of the Franchise Tax Law, may have been authorized to do business, the right to carry on the business for which the company was organized ceases when its charter has been declared void in Delaware. (Fletcher Cyclopedia Corporations, Vol. 17, Sec. 8580; *Lehrich v. Sixth Avenue Bancorporation, Inc. et al.*, 296 N. Y. S. 358.) As in Delaware, however, the corporation may, under decided cases, continue for three years to project itself into other states for the limited purpose of prosecuting and defending suits by or against it and settling its affairs. (*State of Washington ex rel. Bond & Goodwin & Tucker, Inc. v. Superior Court, State of Washington*, 53 S. Ct. 624, 289 U. S. 361; *Kelly v. International Clay Products Co.*, 140 A. 143; *Lyman v. Knickerbocker Theatre Co.*, 5 F. 2d 538; *Eastman, Gardiner & Co. v. Warren*, 109 F. 2d 193; *O'Brien v. King et al.*, 17 N. Y. S. 2d 44; *Arn et al. v. Bradshaw Oil & Gas Co. et al.*, 93 F. 2d 728.)

It is to be observed that a Delaware corporation, the charter of which has been thus declared inoperative, does not *at any time* become extinct, as is the case three years after a Delaware corporation is dis-

solved by its own volition under Sec. 39 of the Corporation Law. In the instance of a corporation whose charter has been voided and corporate powers declared inoperative under Sec. 71 of the Franchise Tax Law, the corporate powers are merely suspended, subject to being restored *at any time* upon a compliance with the provisions of Sec. 74 of the Franchise Tax Law. As was stated in *Watts et al. v. Liberty Royalties Corporation et al.*, 106 F. 2d 941:

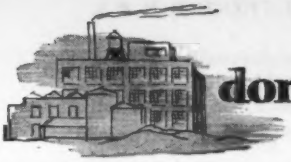
> "So long as a corporation may be reinstated by the payment of delinquent fees and have validated all of its acts that were done while its powers were suspended, the corporation is not dead."

In that case, a Delaware corporation, whose charter was voided for failure to pay the annual fees for two years was held, after the expiration of the three-year statutory period for winding up its affairs, to have the power to reorganize under the Federal Bankruptcy Act.

In 1949, the Montana Supreme Court ruled that a Delaware corporation, redeeming real estate more than three years after the forfeiture of its charter, was not doing business in Montana. Delaware corporations were regarded as having power to exercise redemption procedures, even though the statutory limitation period had elapsed. (*Stensvad v. Ottman et al.*, 208 P. 2d 507; see page 29.) However, in 1947, the Minnesota Supreme Court held that a Delaware company, whose charter was declared void for nonpayment of taxes did not have the capacity, incidental to winding up, to acquire a vendee's interest under a contract for a deed involving title to real estate. (*Kratky v. Andrews et al.*, 28 N. W. 2d 624.)

Withdrawals and Dissolutions

Where it is desired to effect, before the end of the calendar year, either the withdrawal of a foreign corporation from a state in which it had been authorized to do business or the dissolution of a domestic corporation, counsel have usually found it is advisable to initiate the dissolution or withdrawal proceedings in most states as early as possible. Thus, if there are time-consuming requirements with which compliance must be had, ample provision may be made to satisfy such requirements before the end of the year. Frequently such requirements call for the preparation of income and other tax reports, the auditing of the corporate books, or the obtaining of certificates from various state departments that all taxes due the state have been paid. Inasmuch as, in some instances, a month or more may be consumed in effecting such compliance, it is advisable to investigate and institute dissolution or withdrawal proceedings, wherever possible, well in advance of the close of the year.



domestic corporations

DELAWARE

Meeting held without notice by certain stockholders on date set for annual meeting, where directors had fixed a date a week later, but with insufficient notice, ruled invalid; meeting on date set by directors also ruled invalid.

Defendant's by-laws fixed the third Tuesday of May as the date of the annual meeting of stockholders for the election of directors. In 1949, this date was May 17. The by-laws provided that this date should not be changed within sixty days next before the date on which the election was to be held and that a notice of any change was to be given to each stockholder twenty days before the election was held. In 1949, the directors fixed May 24 as the date of the annual meeting instead of May 17. Notice was mailed by the corporation on May 11 to common stockholders as of the close of business on April 22. On May 17, persons owning more than 90 thousand shares of common stock met at the hour and place fixed by the by-laws for the annual meeting, no notice being sent to stockholders that this meeting would be held. A quorum was not present and the meeting was adjourned to a future date. Notice of the adjournment was given to stockholders by a common stockholders' committee. On May 19, plaintiff common stockholder instituted suit to test the validity of the meetings.

The Vice Chancellor declared the meeting called by the directors for May 24 validly called and directed that it be adjourned to July 15 for the holding of an election. He ruled the meeting held on May 17 invalid for want of notice. Upon appeal to the Supreme Court of Delaware, that court agreed that the meeting of May 17 was invalidly held because no written notice ten days in advance of the meeting was given to stockholders as required by a section of defendant's by-laws and that the adjournment of the meeting and the giving of notice of the adjourned date did not cure the defect of want of notice in the first instance. The court, after an examination of the pertinent by-law sections, ruled that the meeting of May 24 was also invalidly held, finding that the ten day notice given with respect to it was not the reasonable notice implied as a requisite under the circumstances and held that "unless twenty days notice is given of a new date for a meeting," "the burden falls on the party who would sustain the validity of the meeting to demonstrate that a shorter time is reasonable under the circumstances."

Gries et al. v. Eversharp, Inc., 67 A. 2d 69. Hugh M. Morris and Edwin D. Steel, Jr., for the appellant Gries. David F. Anderson and Clarence A. Southerland, for the appellants Levien. Daniel O. Hastings and Aaron Finger, of Wilmington, and Charles Grimes, of New York City, for the appellee. CCH Requisition No. 415835.

State Supreme Court holds unenforceable voting trust agreement between two stockholders, providing that neither was to sell his stock for almost ten years without joint consent.

In *Tracey v. Franklin et al.*, 61 A. 2d 780, (The Corporation Journal, January, 1949, page 245), the Court of Chancery, New Castle County, ruled that a voting trust agreement between two stockholders, providing that neither was to sell his stock without joint consent for almost ten years, with cross-options to purchase in case of death, was invalid as imposing unreasonable restraints upon the power of alienation. Upon appeal, the Supreme Court of Delaware opened its opinion with these words: "The precise question presented here is whether a voting trust agreement is contrary to public policy, and therefore invalid, because the trust certificates representing the beneficial interest of the owners of the stock deposited are, by the express terms of the agreement, made inalienable and nonassignable."

The State Supreme Court affirmed the judgment of the Chancery Court, ruling that the entire agreement was unenforceable and holding the restraints invalid, as the facts did not disclose legally sufficient purposes to justify the restraints on alienation.

Tracey et al. v. Franklin et al., 67 A. 2d 56. Arthur G. Logan and Robert V. Huber of Logan, Duffy & Boggs of Wilmington and Sidney G. Kingsley of New York, for plaintiff. Clarence A. Southerland of Southerland, Berl & Potter of Wilmington, for defendants.

NEW JERSEY

Chancery Court holds 1946 Escheat Act valid.

In *State of New Jersey v. Standard Oil Company*, 64 A. 2d 386, (The Corporation Journal, May, 1949, page 325), the New Jersey Superior Court, Chancery Division, Mercer County, observed that it did not regard the Escheat Act of 1946 as "manifestly unconstitutional on its face." In a later opinion, giving judgment for the plaintiff State, the court has resolved the issue of the constitutionality of the statute in favor of its validity. The court regarded it as "consequently unnecessary to discuss the application of the statute of limitations to the respective classes of intangible property here sought to be escheated."

As to the relation of the defendant debtor to an unknown claimant, the court noted that "the defendant has successfully argued before me that where the statute of limitations has tolled, the chose in action against it has been extinguished."

Noting that the defendant debtor was a New Jersey company and that its domicile was in that state, the court regarded the situs of the escheatable res as being there, applying "the general jurisdictional rule that debts, choses in action and kindred claims are determined to be situate where the debtor or other person resides against whom the claim exists, that is, in the jurisdiction in which such choses and claims are properly enforceable and recoverable, regardless of the locations of the debtor's physical properties and of his major business activities."

The State of New Jersey etc. v. Standard Oil Company, Superior Court of New Jersey, Chancery Division, Mercer County, September 20, 1949. Commerce Clearing House Court Decisions Requisition No. 417149.

NEW YORK

Venue upheld, where stockholder's derivative suit, based on diversity of citizenship, was brought by a citizen of Virginia in Southern District of New York against a New York corporation having its principal office in another District where other defendants resided.

Plaintiff, a citizen of Virginia, commenced a stockholder's derivative action in the United States District Court, Southern District of New York, against individuals and fiduciaries who resided in, and two New York corporations whose principal places of business were located in, the Eastern District of New York, the suit being grounded upon diversity of citizenship and the amount in controversy exceeding $3,000. The defendants moved to dismiss the action or for a change of venue because plaintiff was a resident of Virginia and all the defendants were residents of the Eastern District of New York and that the Southern District of New York was not the proper venue for the action.

The court ruled that, under the provisions of the revised Judicial Code, Title 28, Section 1391, the action was brought in the proper judicial district and that defendants' motion should be denied. The court remarked: "The defendant corporations are New York corporations, and as such are incorporated and authorized to do business in any district in the State of New York, and in these circumstances are residents of the Southern District of New York within the language of Section 1391(c), in effect September 1, 1948. Under Section 1392(a) venue may properly be laid in this Southern District. even though residents of the Eastern District of this state are joined as defendants."

Cleverley v. Nelson et al., United States District Court, Southern District of New York, May 14, 1949. Abraham M. Glickman, attorney for plaintiff, (Samuel H. Levenkind, of counsel), of New York City. Paul J. Madden, attorney for defendants, (Herbert A. McDevitt, of counsel), of New York City. Commerce Clearing House Court Decisions Requisition No. 411339.

OHIO

County Court dismisses a petition seeking to restrain a consolidation involving the elimination of accumulated preferred dividends on the stock of a constituent company.

Plaintiffs were holders of $5 cumulative preferred stock in defendant corporation, on which there were arrearages of $26.16 per share. An agreement of consolidation, duly approved, had been filed to consolidate defendant with another corporation which owned all of the common stock of defendant and in which defendant owned 33⅓% of the common stock and 35% of the preferred stock. Plaintiffs sought to restrain defendants from consummating the consolidation agreement. This agreement provided for the issuance of stock in the new company in exchange for the surrender of the preferred stock of the defendant, and the right of the holders to the arrearages mentioned.

The Court of Common Pleas, Cuyahoga County, noted that in 1939 the Legislature had made express and specific provision for the elimination of preferred

dividend arrearages by amendment to the articles of incorporation, and that the law also contained provision for stockholders dissenting to a consolidation through proceedings at law to determine the fair cash value of their shares. After an exhaustive inquiry into the law in Ohio and as represented through decisions in other states, judgment was given for the defendants and the petition ordered dismissed.

Anderson et al. v. Cleveland-Cliffs Iron Co. et al., 87 N. E. 2d 384. Wilbert J. O'Neill, Silas J. Blair and Earl J. Krock (Robert J. Newton, of counsel), of Cleveland, for plaintiffs. Jones, Day, Cockley & Reavis (William B. Cockley, Frank C. Heath and John G. Sarber, of counsel), of Cleveland, for defendants.

VIRGINIA

Federal court held to have no jurisdiction to enforce remedies of stockholder dissenting to merger.

Section 3822(a), Code of Virginia, provides the procedure for ascertainment and recovery of the fair cash value of the stock of dissident stockholders of merged corporations and specifies the courts of the state in which dissentients may establish their rights and obtain their remedies. Plaintiff instituted an action against his corporation, in the United States District Court, W. D. Virginia, Abingdon, as a dissenting stockholder to his company's merger with another corporation, to recover the fair cash value of stock. The court, after a review of the statute and decisions, concluded that the remedy provided by the Code section was exclusive and that the rights of dissident stockholders thereunder must be asserted in the state courts specified in the statute, ruling that the Federal court had no jurisdiction.

McGhee v. General Finance Corporation, 84 F. Supp. 24.

foreign corporations

ARKANSAS

Unlicensed corporation ruled not subject to service of process, where accumulating several shipments out of state into a carload shipment, distributed by Arkansas agent to various purchasers in Arkansas.

Petitioner sought in several ways to obtain jurisdiction over respondent foreign corporation, not licensed in Arkansas. The company had a traveling salesman who solicited orders from a company in Arkansas, orders being forwarded to New Jersey for acceptance or rejection. Upon acceptance, the shipment was packed, marked and identified for the Arkansas company and placed in a railroad carload shipment containing also goods for distribution to other purchasers in that company's area moving from New Jersey to a point in Arkansas. There a transfer company opened the car and sent

the goods to the respective purchasers. The Supreme Court of Arkansas reaffirmed its ruling in prior decisions to the effect that the activities of a nondomesticated foreign corporation, accumulating several shipments into one carload shipment to an Arkansas point, where an agent distributed the individual shipments to various purchases, constituted interstate commerce and did not constitute "doing business" in Arkansas by the foreign corporation within the purview of the Arkansas statutes.

Various types of service, attempted by serving the corporation officers at the home office in New Jersey, by serving the State Auditor and Secretary of State of Arkansas and by serving a writ of attachment, unsupported by property in Arkansas, were ruled insufficient as resulting in effective process to initiate the action.

Rogers v. Howard, 219 S. W. 2d 240. W. C. Rogers of Nashville, for petitioner. No appearance for respondent.

CALIFORNIA

Corporation soliciting egg business of numerous turkey raisers in state, having resident agent who supplied advice and information, held "doing business" and subject to service of process.

Petitioner foreign corporation, the defendant in an action in the respondent court, sought to halt that action through a writ of prohibition of the District Court of Appeal, Third District. The writ was denied upon a showing that the company, while having no office in California, had a resident agent there who solicited the egg business of various turkey raisers in the state. These were fifteen or twenty in number, of whom the plaintiff below was one. The agent assisted in the examination, supervision and culling of the turkey flocks, giving instructions and information to the raisers as to the packaging and shipment of the eggs, including advice generally and information as to the proper medicines needed, if any.

The court emphasized that the petitioner's activities were systematic and continuous in its solicitation of business in various areas of the state and that it participated in the overall activities of the growers. This substantial business was regarded as giving rise to liability to suit.

Boote's Hatcheries & Packing Co., Inc. v. Superior Court in and for Merced County, 205 P. 2d 31. Adams, Griswold, Winton & Mayes of Merced, for appellant. L. A. Macnicol and Lester J. Penry of Merced, for respondent.

MONTANA

Proclaimed Delaware company held to have right, more than three years after proclamation of forfeiture, to hold title to Montana land, pay taxes to protect that title and to redeem from tax sale.

A Delaware corporation, organized in 1924 and authorized shortly afterward to do business in Montana, had its charter proclaimed void in Delaware in 1932 for failure to pay its Delaware taxes for two consecutive years. The Montana Supreme Court said: "The question is whether the Montana Valley Land Company more

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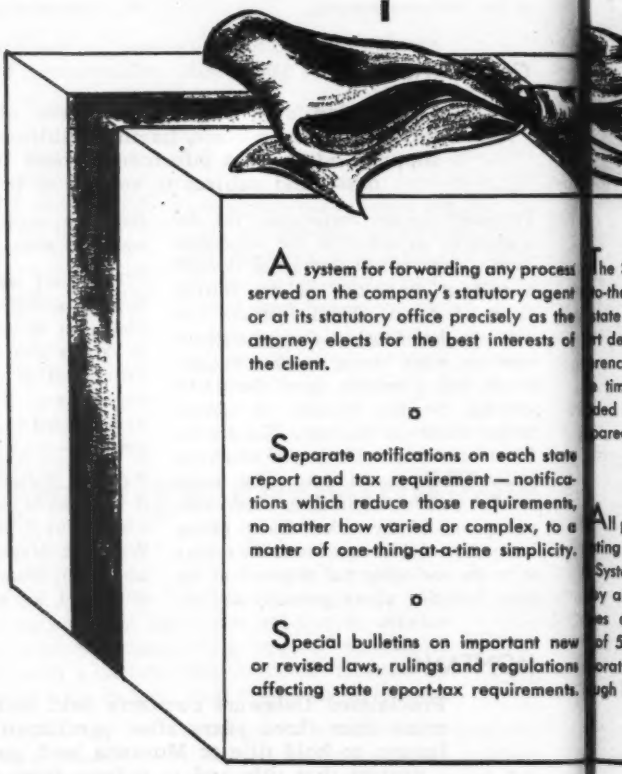

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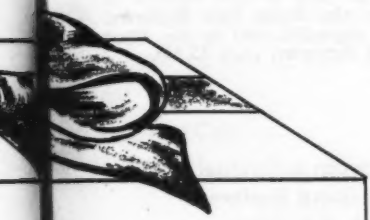

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than three years after the proclamation of forfeiture of its charter and before its revival had sufficient life to redeem from a tax sale. A determination of this question depends upon the law of the domiciliary state of the corporation." After an examination of decisions involving the status of Delaware companies whose charters were proclaimed void under similar circumstances, the court concluded: "Under Delaware law the Montana Valley Land Company was not extinct but only dormant. It could hold title and pay taxes to protect that title and redeem from tax sale."

The court, noting that the company had failed for a number of years after proclamation to file Montana returns of net income and annual reports, and that, under Montana law, it forfeited its right to do business by reason of such delinquency, concluded that the company had not, because of this, lost its right to redeem its property from the tax sale.

Stensvad v. Ottman et al.,* 208 P. 2d 507. CCH Requisition No. 415535.

* The full text of this opinion is printed in the **State Tax Reporter,** Montana, page 305, and in the **State Tax Cases Reporter,** page 15,229.

NEW YORK

Court retains jurisdiction of suit between individual nonresident and foreign corporation doing business in state, on cause of action arising elsewhere.

The plaintiff was a resident of Connecticut and the defendant a railroad organized under the laws of Utah, which operated no lines in New York, but which, by concession, did business in New York. Suit was brought in the City Court, New York County, Special Term, Part I, to recover damages for injuries to plaintiff while a passenger on a train of defendant's in Wyoming. Section 225, General Corporation Law, provides, among other things, that an action may be maintained against a foreign corporation by a nonresident where the foreign corporation is doing business in New York.

The court denied a motion to dismiss the complaint on the ground that the suit was one between two nonresidents, wherein the cause of action arose elsewhere, emphasizing the statutory provision mentioned giving it jurisdiction.

Salomon v. Union Pacific Railroad,* 121 N. Y. L. J. 1634, May 6, 1949. Commerce Clearing House Court Decisions Requisition No. 410651.

* The full text of this opinion is printed in the **New York Corporation Law Reporter,** page 9355.

Unlicensed corporation held doing business so as to be subject to service of process where it systematically purchased goods in state through an exclusive purchasing agent.

Defendant, a South African importing corporation, not qualified to do business in New York, sought to vacate service of summons and complaint effected upon it by serving an officer of a New York corporation which made purchases

for it in New York. The latter company was accepted generally as defendant's local representative and was its exclusive buying agent.

The Court of Appeals of New York, in considering the question whether the court below acquired jurisdiction of the defendant, regarded the situation as "controlled by those cases which hold a foreign corporation subject to the jurisdiction of our courts if it buys merchandise, in a systematic and continuing fashion, through an exclusive purchasing agent with an established and permanent place of business in New York." The question was, therefore, answered in the affirmative and the service upheld.

Sterling Novelty Corp. v. Frank & Hirsch Distributing Co., Ltd.,* 299 N. Y. 208, 86 N. E. 2d 564. Herman Keller and Harry Balterman of New York City, for appellant. Maxwell A. Rubin of New York City, for respondent. Commerce Clearing House Court Decisions Requisition No. 412644.

* The full text of this opinion is printed in the **State Tax Reporter,** New York, page 12, 193, and in the **New York Corporation Law Reporter,** page 9368.

NEW YORK

Service of process upheld where made upon local purchasing agent of foreign corporation.

The plaintiff, a citizen of Georgia, sued defendant Brazilian corporation in a Federal District Court in New York in an action based upon diversity of citizenship, to recover for services performed for the defendant in Brazil as an engineer and for damages for a wrongful discharge. The summons and complaint were served upon the Brazilian Export Corporation, a New York company, as defendant's agent. The latter acted as a buyer for South American corporations, including the defendant, transmitting offers and acceptances. Defendant maintained an adequate drawing account in a New York bank in order to finance its purchases by means of letters of credit. The contract in suit was drawn in New York at the office of the New York company, and executed by it as the defendant's agent.

The United States Court of Appeals, Second Circuit, held that "the service of process on the Brazilian Export Corporation was valid. It would have been valid had the action been brought in the state court; and, when that is true, the service is also valid in a case begun in a federal district court." It remanded the case to the District Court with the following instructions: "The court will assume that the defendant carries on a continuous business in New York, but it will hear the parties as to whether the circumstances are such as would support a plea, *forum non conveniens,* if it had so pleaded in an action where jurisdiction was unquestioned."

*Latimer v. S/A Industrias Reunidas F. Matarazzo,** United States Circuit Court of Appeals, Second Circuit, June 4, 1949. Commerce Clearing House Court Decisions Requisition No. 412525. *Petition for writ of certiorari filed in the Supreme Court of the United States, August* 31, 1949; *Docket No.* 301.

* The full text of this opinion is printed in the **New York Corporation Law Reporter,** page 9381.

SOUTH DAKOTA

Service of process upon unlicensed foreign company doing business upheld where made upon Secretary of State, the corporation's assent to the service being held to be implied.

Defendant foreign corporation had engaged in intrastate business in South Dakota for a number of years without qualifying as a foreign corporation. Had it obtained such authority to do business, it would have appointed the Secretary of State as its agent upon whom process might be served. In this suit upon a cause of action arising out of defendant's South Dakota activities, service of process, which defendant moved to have set aside, was made upon the Secretary of State under SDC Sec. 11.2108, which provides that "service on the Secretary of State shall be effective only as to such corporations as are required to appoint such Secretary their agent for service of process."

The Supreme Court of South Dakota agreed with plaintiff's contention that the defendant, having transacted business in the state for a period of some years without obtaining a license therefor, had submitted itself to the jurisdiction of the courts. The court said: "We think it proper to hold that if a foreign corporation fails to comply with the laws of this state, but is still engaged in business therein, and permitted to carry on such business, it must transact its business here subject to the laws of the state, and its assent to service upon the Secretary of State is implied. See authorities cited in Note 2, 113 A. L. R. 16. It is observed that our code, SDC 11.2002, denied to appellant the right to transact business in this state until such time as it should comply with the provisions of SDC 11.20. Having voluntarily assumed the right to engage in business in South Dakota we think that appellant should not now be heard to say that it did not authorize the Secretary of State to act for it in the formal matter of accepting a summons, an outgrowth of the exercise of such assumed right."

Clay v. Kent Oil Co.,* 38 N. W. 2d 258. A. J. Beck of Elk Point and Shull & Marshall of Sioux City, Iowa, for apellant. Donley & Crill of Elk Point, for respondent.

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* The full text of this opinion is printed in the **State Tax Reporter,** South Dakota, page 405.

WASHINGTON

Unlicensed foreign steamship corporation, engaged in foreign commerce, having an agent soliciting business in state, ruled subject to suit in Federal Court.

Defendant British steamship corporation, not licensed in Washington, moved to dismiss suit against it in the United States District Court, Eastern District, Washington, Southern Division, initiated by serving a Washington corporation as its local agent. Advertisements of the Steamship company in trade publications listed an office which was that of the Washington corporation. Its number in the telephone directory was also that of the Washington company, on whose door it was indicated that this company was the agent or general agent of the defendant, as did the local company's letterheads. The defendant never carried on any intrastate transportation business and was engaged, among other activities, in ship-

ment of fruit from Atlantic ports to foreign countries under arrangements, effected by the Washington company for the shipment of Washington crops. The suit was instituted to recover from the British corporation and the other defendants, intermediate carriers, damages for negligence resulting in loss in the shipment of perishable fruit.

The court, after an examination of the decided cases relating to service of process upon an unlicensed foreign corporation and a consideration of the inconvenience of the defendant in answering suit in Washington concluded that the retention of jurisdiction over the defendant would not impose an unreasonable burden upon foreign commerce. The Washington company was also regarded as an agent of the moving defendant upon whom service of process could be made.

Perham Fruit Corp. et al. v. Cunard White Star, Limited et al., 84 F. Supp. 354. Ernest Falk, Yakima, Washington, for plaintiffs. Bogle, Bogle & Gates and Claude E. Wakefield, Seattle, Washington, for defendant Canadian Pac. R. Co. Hart, Spencer, McCulloch & Rockwood, Portland, Oregon, and Brown & Hawkins, Yakima, Washington, for defendant Spokane, P. & S. R. Co. A. J. Clynch, Seattle, Washington, for defendant Great Northern R. Co. Hamblen, Gilbert & Brooke, Spokane, Washington, for defendant Union Pac. R. Co. Frank J. McKevitt, Spokane, Washington, Dean H. Eastman and Roscoe Krier, Seattle, Washington, for defendant Northern Pac. R. Co. Clyde C. Rowan, Spokane, Washington, for defendant Canadian Nat. Rys. Merritt, Summers & Bucey, Seattle, Washington, for defendant Cunard White Star, Limited.

taxation

DISTRICT OF COLUMBIA

Property, imported and stored in District in original packages, ruled subject to property taxes.

The assessor levied a property tax upon newsprint of the petitioner imported from Canada and stored in a warehouse in the District, which was subsequently sold to publishers who broke the original packages when the paper was put on the presses. The petitioner contended that, so long as the imported article remained in its original package, it could not be taxed because of the constitutional provisions relating to imports.

The United States Court of Appeals for the District of Columbia upheld the assessment, which had been affirmed by the Board of Tax Appeals, emphasizing that there is no constitutional prohibition upon the Federal Government in respect to the taxation of imports, and that the local legislative function of Congress, in legislating for the District, therefore, resulted in ample power existing for the questioned tax. The "original package" doctrine, concerned with whether property is or is not an import, was regarded as immaterial in this case because, the court concluded, "the tax is valid even if the property retains its charter as an import."

*Mercury Press, Inc. v. District of Columbia,** 173 F. 2d 636. Herbert G.

Pillen, for petitioner. George C. Updegraff, Assistant Corporation Counsel, with whom Vernon E. West, Corporation Counsel, and Chester H. Gray, Principal Assistant Corporation counsel, were on the brief, for respondent. Commerce Clearing House Court Decisions Requisition No. 402368. **(Petition for writ of certiorari filed in the Supreme Court of the United States, May 18, 1949; Docket No. 800. Certiorari denied, June 13, 1949.)**

* The full text of this opinion is printed in the **District of Columbia Tax Reporter**, page 2593.

INDIANA

Unlicensed foreign corporation, contracting to furnish material and erect buildings in Indiana, ruled subject to gross income tax on entire contract, where erection was effected through a subcontractor.

The Indiana gross income tax was held applicable to the entire amount involved under a contract whereby a Pennsylvania company, not licensed in Indiana, agreed to erect buildings in Indiana for an Indiana company, but engaged an Ohio company to do the actual erection, the Pennsylvania company furnishing much of the material. The erection by the Ohio company was regarded as performance of part of the contract by the Pennsylvania company, giving Indiana the right to levy its gross income tax on the receipts from the performance of the contract against the Pennsylvania company, both for the furnishing of the material and for the construction work done by the Ohio company.

*Gross Income Tax Division v. Fort Pitt Bridge Works,** 86 N. E. 2d 685. Eleon H. Foust, Attorney General, Eugene M. Fife, Jr., and John J. McShane, Lloyd C. Hutchinson, Deputy Attorneys General, for appellant. McHale, Patrick, Myers and Cook of Indianapolis and Alex A. Garroway of Pittsburgh, Pa., for appellee.

* The full text of this opinion is printed in the **State Tax Reporter**, Indiana, page 1472.

state legislation

Arizona—Chapter 53, Laws of 1949, clarifies the procedure relating to the qualification of foreign corporations by providing for the issuance of a license to do business upon the filing of the appropriate documents and the payment of qualification fees, whereupon the corporation may commence to do business. Local publication of the charter continues to be required and, if properly effected within three months after the filing of the documents and payment of qualification fees, the corporation's acts are valid from the date of the issuance of the license to do business.

Connecticut—Chapter 41 eliminates the requirements that income tax returns be filed under oath.

Michigan—House Bill 16 eliminates the following items of personal property from taxation under the general property tax act: Moneys, annuities, surplus credits, corporate shares, bank and trust company shares, foreign corporate shares, grain and accepted credits.

Minnesota—Chapter 642 increases the rate of the corporate income tax from 6% to 6.3% of the net income assignable to the state and imposes an additional annual tax of $5.

New Hampshire—Chapter 265 increases the filing fee for the annual report of domestic and foreign corporations from $5 to $10.

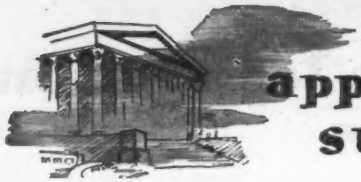
New Jersey—Assembly Bill No. 50, subject to approval by the voters at the November election, provides for an occupational and business excise tax of 1/10 of 1% of gross receipts, exempting, however, those whose gross receipts for the taxable year are $20,000 or less.

New York—Chapter 805 re-enacted Sections 35 and 36 of the Stock Corporation Law and provides for the inclusion of any one or more amendments, whether change in capitalization or other change, in one certificate.

Chapter 848 provides that, for corporate franchise tax purposes, the taxpayer's real property shall include property rented as well as owned. Changes in net income occasioned by corrections by the Federal Bureau of Internal Revenue, including changes resulting from renegotiation of contracts or sub-contracts, must be reported within 90 days after final determination.

North Carolina—Senate Bill 192 permits the use of facsimile signatures on stock certificates.

Senate Bill 192 provides that directors of a business corporation need not be stockholders in the corporation unless the articles of incorporation or the by-laws so provide.



appealed to the supreme court

The following cases previously digested in The Corporation Journal have been appealed to The Supreme Court of the United States.*

OCTOBER 1948 TERM

DISTRICT OF COLUMBIA. Docket No. 800. *Mercury Press, Inc. v. District of Columbia,* 173 F. 2d 636. (The Corporation Journal, November, 1949, page 35.) Personal property assessment on imports. **Petition for writ of certiorari filed, May 18, 1949. Certiorari denied, June 13, 1949.**

MISSISSIPPI. Docket No. 287. *Interstate Oil Pipe Line Company v. Stone,* 35 So. 2d 73, 36 So. 2d 142. (The Corporation Journal, January, 1949, page 253.) Gross sales tax—operation of pipe lines in intrastate and interstate commerce; use tax-purchase of property used in furthering interstate commerce. **Appeal filed, September 18, 1948. Jurisdiction noted, October 18, 1948. Argued, January 13, 1949. Judgment affirmed June 20, 1949.** (The Corporation Journal, October, 1949, page 15.) **Rehearing denied, October 10, 1949.**

OCTOBER 1949 TERM

NEW YORK. Docket No. 301. *Latimer v. S/A Industrias Reunidas F. Matarazzo,* U.S.C.C.A., 2d Cir., June 4, 1949. (The Corporation Journal, November, 1949, page 33.) Doing business—service of process on local purchasing agent of unlicensed foreign corporation. **Petition for writ of certiorari filed, August 31, 1949.**

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* Data compiled from **CCH U. S. Supreme Court Bulletin, 1949-1950.**

regulations and rulings

Alabama—A city or town may enact a valid ordinance prohibiting soliciting in certain residential areas under the police power without violating the commerce clause of the Federal Constitution, but an ordinance requiring a license for a person to solicit orders for goods from another state to be shipped to the purchaser violates that clause. (Opinion of the Attorney General to the Board of City Commissioners, Dothan, State Tax Reporter, Alabama, ¶ 35-011.)

California—A foreign corporation is doing business within the state and subject to the franchise tax based on income in the preceding year when, during that year, it moved its principal office out of the state and sold all but two relatively small property holdings, but in the subsequent year continued to rent these holdings. (Ruling of State Board of Equalization, State Tax Reporter, California, ¶ 200-060.)

Kentucky—The Department of Revenue must require withholding in all cases where a tax would be due. On Revenue Form 798-W there is a special table for Indiana residents taking into consideration the tax which Indiana residents should pay to Indiana. Employers who use this table will find that they are required to withhold in very few instances; however, this does not relieve them of the responsibility of filing informational returns. (Letter of Supervisor of Income and Corporation License Taxes, State Tax Reporter, Kentucky, ¶ 14-201.)

A farmers' tobacco cooperative formed under KRS 272.100 as a non-profit organization, but which pays dividends on its stock, is subject to the organization tax, there being nothing which specifically exempts such a corporation from payment of this tax. (Opinion of the Attorney General, State Tax Reporter, Kentucky, ¶ .002.)

North Carolina—Section 211 of the Franchise Tax requirements, which provides for a deduction allowed a corporation acquiring the assets of an old corporation, is confined to instances when a single new corporation or newly domesticated corporation acquires the entire assets of an old corporation, and does not have any application where the assets of the old corporation are taken over by two or more newly incorporated or domesticated corporations. (Opinion of the Attorney General to the Commissioner of Revenue, State Tax Reporter, North Carolina, ¶ 5-309.)

Where a foreign corporation has an underground pipe line constructed for it across North Carolina for the transmission of gas from Texas to New York, the line to be used solely for the transmission of gas in interstate commerce, with no gas being sold or delivered in North Carolina, such a corporation is not doing business and is not required to domesticate in the state. (Opinion of the Attorney General to the Secretary of State, State Tax Reporter, North Carolina, ¶ 2-012.)

Oklahoma—Order No. 9621, issued by the Tax Commission is a regulation indicating the taxability of sales where goods are shipped into and out of the state. (State Tax Reporter, Oklahoma, ¶ 60-218.20.)

some important matters

for November and December

This Calendar does not purport to be a *complete* calendar of all matters requiring attention by corporations in any given state. It is a condensed calendar of the more important requirements covered by the *State Report and Tax Bulletins* of The Corporation Trust Company. Attorneys interested in being furnished with timely and complete information regarding *all* state requirements in any one or more states, including information regarding forms, practices and rulings, may obtain details from any office of The Corporation Trust Company or C T Corporation System.

Alaska—Annual Corporation Tax due within 60 days from January 1.—Domestic and Foreign Corporations.

Delaware—Annual Report due on or before first Tuesday in January.—Domestic Corporations.

District of Columbia—Annual Report due between January 1 and January 20.—Domestic Corporations.

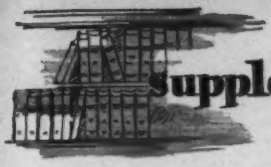
Application for license in connection with District Franchise (Income) tax due on or before January 1.—Domestic and Foreign Corporations.

Georgia—Annual License Tax Report and Tax due on or before January 1.—Domestic and Foreign Corporations.

Missouri—Annual Franchise Tax due on or before December 31.—Domestic and Foreign Corporations.

New York—Second installment of Franchise (Income) Tax of Business Corporations due on or before November 15 (or within 30 days after notice, if given later than October 15; payable not later than January 15, in any event).—Domestic and Foreign Business Corporations other than real estate companies.

United States—Fourth installment of Income Tax imposed for the calendar year 1948 due on or before December 15.—Domestic Corporations and Foreign Corporations having an office or place of business in the United States.



supplementary literature

In connection with its various activities The Corporation Trust Company publishes the following supplemental pamphlets, any of which will be sent without charge to readers of The Journal. Address The Corporation Trust Company, 120 Broadway, New York 5, N. Y.

Some Contracts Have False Teeth. Interesting case-histories showing advisability of contractor getting lawyer's advice before undertaking construction work outside home state, even for federal government.

What Constitutes Doing Business. (Revised to March 1, 1948.) A 187-page book containing brief digests of decisions selected from those in the various states as indicating what is construed in each state as "doing business."

What Does a Transfer Agent Do? This illustrated pamphlet gives the highspots of a transfer agent's services in 3 minutes reading time, with explanatory text if you want to read further. Of value to small as well as large corporations.

More Sales with Spot Stocks. Advantages found by many manufacturers in carrying spot stocks at strategic shipping points—and preliminary statutory measures necessary to protect corporate status.

Suppose the Corporation's Charter Didn't Fit! Shows how charter provisions which suit well enough at time of organization may be handicaps for the corporation in later life—some measures to avoid them that a lawyer may help his client to take.

When a Corporation Is P. W. O. L. A simple explanation of the reasons for and purposes of the foreign corporation laws of the various states, and illustrations of when and how a corporation makes itself amenable to them. Of interest both to attorneys and to corporation officials.

After the Agent for Service Is Gone. What will happen *then* if suit is brought against the company? Some examples taken from actual court cases, with full texts of the final decisions.

Delaware Corporations. Presents in convenient form a digest of the Delaware corporation law, its advantages for business corporations, the attractive provisions for non par value stock, and a brief summary of the statutory requirements, procedure and costs of incorporation.

We've Always Got Along This Way. A 24-page pamphlet of cases in various states in which corporation officials who had thought they were getting along very well with statutory representation by a business employe suddenly found themselves in trouble.

Judgment by Default. Gives the gist of Rarden v. Baker and similar cases, showing how corporations qualified as foreign in any state and utilizing their business employes as statutory representatives are sometimes left defenseless in personal damage and other suits.

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The CORPORATION JOURNAL

The Corporation Journal is published by The Corporation Trust Company monthly, except in July, August, and September. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices.